

# EXHIBIT 51



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**VIA E-MAIL AND ELECTRONIC SERVICE**

Jeniphr A.E. Breckenridge  
Hagens Berman Sobol Shapiro LLP  
Suite 2900  
1301 Fifth Avenue  
Seattle, WA 98101

**Re: Montana AWP Action**

Dear Jeniphr:

During the depositions last week, Montana's 30(b)(6) witnesses Jeff Buska and Dan Peterson identified numerous additional categories of responsive documents that have not been produced. We ask that Montana produce those documents as soon as possible, given the upcoming discovery cut-off of January 31. The identified documents include:

1. Full documentation from Montana's Medicaid State Plan, to the extent the documents relate to reimbursement for the drugs at issue. In particular, the State has failed to produce any of the State Plan documentation relating to reimbursement for physician-administered drugs (Buska Vol. II., p.279:10-12) ("There would be a state plan page, under 4.19B, methods and standards for establishing payment rates for physician services.").
2. Documents regarding Montana Medicaid's capitated managed care program (which the State had during the 1990's), including documents sufficient to show the number of enrollees, and – as Mr. Buska testified – that the State paid a flat fee per enrollee for this program (and thus that the State was not paying on the basis of AWP for those physician-administered drugs covered under this program).

[06735-0059/S1.053500.141]

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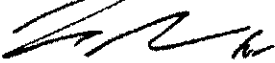
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3. Documents regarding Montana Medicaid's reimbursement for physician-administered drugs, including all of the physician fee schedules in effect since 1991 and documents sufficient to show how the fee schedules were set by the State. Mr. Buska testified that Mary Angela Collins and Denise Brunett would be knowledgeable about the nature and existence of these documents. A document produced by Montana suggests that the fee schedules were updated twice a year and are maintained by ACS' Provider Relations group. (MT 002635.)
4. Responses to the "dispensing fee questionnaires" filled out by pharmacies new to Montana Medicaid (referenced on the first page of Buska Ex. 38, MT 00030).
5. The acquisition cost study done by the Montana Pharmacy Association and referenced in Buska Ex. 32 (MT 005659).
6. All correspondence with CMS regarding proposed changes to the reimbursement rate, *e.g.*, Buska Ex. 24 (MT 005648) (for the change proposed in 2002), as we do not believe that similar documents have been produced for the changes proposed in 1994, 2000, and 2003; and all memos regarding the rationale for any of the proposed rule changes, *e.g.*, Buska Ex. 32 (MT 005658-59) (which also relates only to the change proposed in 2002).
7. All internal communications among Montana Medicaid employees (or between Montana Medicaid employees and other State agencies) regarding changes to the reimbursement rate.
8. All "second notices" of proposed rule changes, *e.g.*, Buska Ex. 38 (MT 000030-38), which contain the State's responses to various comments received regarding the proposed rule. We continue to request full copies of all of the actual comments received and meeting minutes regarding hearings on proposed changes to the State's reimbursement rate, which are maintained in the Office of Legal Affairs.
9. The State of Montana's contract(s) with ACS, and ACS' contract with the ACS PBM entity, about which Mr. Peterson testified on behalf of the State.

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We ask that you produce these documents in conjunction with Montana's ongoing supplementation of its production of responsive documents. We reserve the right to request additional responsive documents that are identified during future depositions.

Very truly yours,



Kathleen M. O'Sullivan

cc: Joseph P. Mazurek (by e-mail)  
Counsel of record (by electronic service)